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Filing date: **05/13/2011**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92051279
Party	Defendant Norm Oeding
Correspondence Address	ROBERT . BLINN PO BOX 75144 WICHITA, KS 67275-0144 UNITED STATES rblinn@robertblinn.com
Submission	Answer
Filer's Name	Robert O. Blinn
Filer's e-mail	rblinn@robertblinn.com
Signature	/robert o blinn/
Date	05/13/2011
Attachments	92051279RegistrantsResponsetoAmendedPet.pdf (8 pages)(229146 bytes)

UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

RED HEN BREAD, LLC

Petitioner,

v.

Norm Oeding

Registrant.

Cancellation No. 92051279

Registration No. 3,614,763

**REGISTRANT'S RESPONSE
TO PETITIONER'S AMENDED PETITION TO CANCEL**

1. Registrant accepts and stipulates to Petitioner's assertions set forth in counts 1 through 4 of Petitioner's amended petition to cancel.

2. Registrant accepts and stipulates to Petitioner's assertions set forth in count 5 of Petitioner's amended petition to cancel only in part. Registrant accepts and stipulates that there is a "purchasing public" that "has come to know, rely upon, and recognize the goods of Petitioner by [Petitioner's] mark". However, Registrant contends that Petitioner's a purchasing public is limited in geographic scope to the Chicago metropolitan area. Admittedly, this is a large demographic in terms of population. But the Petitioner has presented no evidence to show that there is any overlap between the market served by Petitioner and the market served by Registrant. Upon information and belief, Petitioner operates, at most, three bakery

locations in Chicago, Illinois. Registrant knows of no evidence showing that Petitioner's "purchasing public" includes individuals in the Wichita area or the region surrounding Wichita, Kansas.

3. Registrant accepts and stipulates to Petitioner's assertions set forth in counts 6 and 7 of Petitioner's amended petition to cancel.

4. Registrant rejects Petitioner's assertions set forth in count 8 of Petitioner's amended petition to cancel. Registrant contends that the Red Hen motif is a common motif employed by bakeries and bakers of bread products for use as a trademark. Registrant, by conducting a casual search, has found at least two other instances of such use. Accordingly, Registrant contends the board should give narrow scope to both marks when determining a likelihood of confusion. Accordingly, inclusion of the words "RED HEN" should not be sufficient to establish a likelihood of confusion. The marks are dissimilar and the only words in common between Registrant's mark and Petitioner's mark are "RED HEN" and those words have been used by other bakers and bakeries in their trademarks and servicemarks.

5. Registrant rejects Petitioner's assertions set forth in count 9 of Petitioner's amended petition to cancel. Purchasers are not likely to consider the goods of the Registrant as emanating from or associated with the Petitioner because:
(a) purchasers of the goods of the Registrant will be geographically remote from the

purchasers of the goods of Petitioner and (b) the marks of the Registrant and Petitioner are sufficiently dissimilar to obviate a likelihood of confusion.

6. Registrant responds to counts 10 and 11 of Petitioner's amended petition to cancel by noting that the evidence presented by Registrant to Petitioner during discovery does show that Registrant has sold fresh baked bread products under the LITTLE RED HEN BAKERY mark and does not show that Registrant has sold bagels under the LITTLE RED HEN BAKERY mark.

7. Registrant responds to counts 12, 13 and 14 of Petitioner's amended petition to cancel by offering to show: (a) Registrant has marketed fresh baked bread products at retail locations which are frequented by customers from outside the state of Kansas and has done so at least as early as March 16, 2008 until the present time. Registrant presents the affidavit of Melinda Foley, President and CEO of Food For Thought, Inc. of Wichita, Kansas attached hereto supporting such marketing of such products at a retail location frequented by customers from outside the state of Kansas. (b) Registrant's labels and packaging are, to the best of Registrant's knowledge, subject to Federal standards, and as such, are regulated by Congress. Accordingly, goods sold that are subject to Federal regulations are arguably goods sold in interstate commerce.

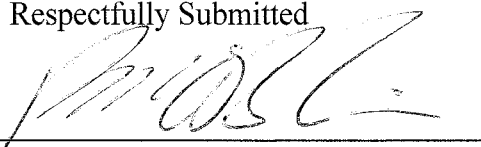
8. Registrant responds to count 15 by noting that a simple agreement to co-exist, (which has been offered by Registrant and rejected by

Petitioner) would remove and obviate the complained of "cloud" supposedly cast by Registrant's registration and any other harms that the Petitioner imagines are or will be inflicted upon Petitioner's mark by the continued existence of Registrant's registration.

Wherefore, Registrant respectfully requests that the Board sustain Registrant registration and deny Petitioner's petition to cancel his registration.

Respectfully Submitted

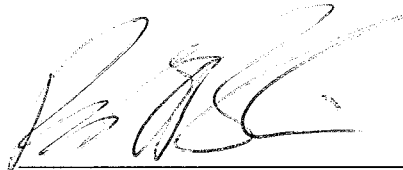
By: _____


Robert O. Blinn,
Of Counsel
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KLEYPAS, LLC
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Wichita, KS 67275-0144
E-Mail: rblinn@robertblinn.com

Attorney for Registrant Norm Oeding.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing REGISTRANT'S RESPONSE TO PETITIONER'S AMENDED PETITION TO CANCEL has been served upon PETITIONER by mailing the same via First Class Mail, Postage Prepaid, to Kathryn Jennison Shultz, 2001 Jefferson Davis Highway, Suite 1102, Arlington, VA 22202, this 13th Day of May 2011.

A handwritten signature in black ink, appearing to read 'R. Blinn', is written over a horizontal line.

Robert O. Blinn

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

RED HEN BREAD LLC,	:	
	:	
Petitioner,	:	
	:	
v.	:	Cancellation No. 92/051,279
	:	(Reg. No. 3,614,763)
NORM OEDING,	:	
	:	
Registrant.	:	
_____	:	

AFFIDAVIT OF MELINDA. FOLEY

I, MELINDA FOLEY, hereby state that:

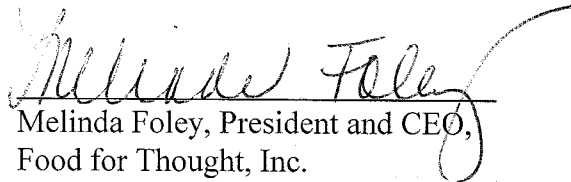
1. I am the President and CEO of Food for Thought, Inc. which has a principle place of business of 2929 East Central, Wichita, Kansas.
2. Food for Thought, Inc. has been conducting a retail business selling health products at the above indicated location from at least as early as March 16, 2008 until the present.
3. Since at least as early as March 16, 2008 and until the present time, Mr. Norm Oeding has been continuously supplying LITTLE RED HEN BAKERY bread products for sale at the above indicated Food for Thought retail location.
4. During the same time period, namely, from at least as early as March 16, 2008 and until the present time, the above indicated Food for Thought retail location has been frequented by customers who reside outside the state of Kansas.

5. I know that customers from outside the state of Kansas frequent my retail business because customers who pay using credit cards often provide information that makes it possible for us to know that the customer resides outside the state of Kansas.

I declare that all statements made herein of my own knowledge are true and all statements made on information and belief are believed to be true; and further that the statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code.

Respectfully submitted,

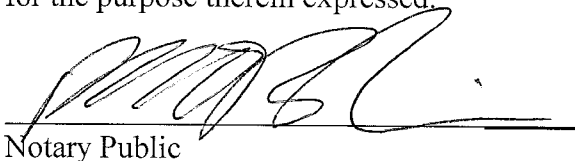
Date: 5/12/11

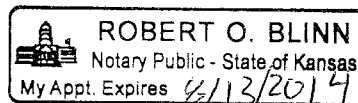

Melinda Foley, President and CEO,
Food for Thought, Inc.

NOTARIZATION

STATE OF KANSAS)
) SS
COUNTY OF SEDGWICK)


Before me this 12th day of May, 2011, personally appeared: Melinda Foley, to me known to be the person who is described in and who executed the foregoing document instrument and acknowledged to me that he/she executed the same of her own free will for the purpose therein expressed.


Notary Public



CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Affidavit of Melinda Foley has been served upon PETITIONER by mailing the same via First Class Mail, Postage Prepaid, to Kathryn Jennison Shultz, 2001 Jefferson Davis Highway, Suite 1102, Arlington, VA 22202, this 13th Day of May 2011.



Robert O. Blinn